

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 457

By: Griffin

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5
6 AS INTRODUCED

7 An Act relating to child competency proceedings;
8 defining terms; authorizing parties to raise certain
9 issue; requiring appointment of counsel under certain
10 circumstances; creating certain presumption; allowing
11 certain finding; requiring certain contents for
12 certain motions; authorizing certain competency
13 evaluation; requiring delivery of certain information
14 to evaluator; establishing requirements for certain
15 evaluator; requiring certain report; specifying
16 required contents of certain report; establishing
17 procedures for certain evaluation; authorizing
18 additional evaluation under certain circumstances;
19 requiring competency hearing; establishing procedures
20 for certain proceedings; requiring certain written
21 determination; authorizing certain actions; allowing
22 order for certain services; specifying requirements
23 for certain services; requiring certain plan and
24 reports; establishing requirements for certain
reports; requiring provision of copies of certain
reports; allowing certain hearing; stating effect of
certain dismissal; providing for codification; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2-2-401.1 of Title 10A, unless
there is created a duplication in numbering, reads as follows:

As used in this act:

1 1. "Competent" and "competency" refer to a child's ability to
2 understand the nature and objectives of a proceeding against the
3 child and to assist in the child's defense. A child is incompetent
4 if, due to mental illness, intellectual disability, or developmental
5 disability, or otherwise due to a lack of mental capacity, the child
6 is presently incapable of understanding the nature and objective of
7 proceedings against the child or of assisting in the child's
8 defense;

9 2. "Child with intellectual disability" means a child with
10 significantly less than the average general intellectual functioning
11 ability generally present in a child with an Intelligence Quotient
12 score of 70 or below, existing concurrently with deficiencies in
13 adaptive behavior;

14 3. "Developmental disability" means a severe, chronic
15 disability:

- 16 a. attributable to a mental or physical impairment or a
17 combination of those impairments,
- 18 b. occurring before the individual reaches age 18,
- 19 c. likely to continue indefinitely,
- 20 d. resulting in substantial functional limitations in
21 three or more of the following areas of major life
22 activity:
 - 23 (1) self-care,
 - 24 (2) receptive and expressive language,

- 1 (3) learning,
- 2 (4) mobility,
- 3 (5) self-direction,
- 4 (6) capacity for independent living, and
- 5 (7) economic self-sufficiency; and

6 e. reflecting the need for a combination and sequence of
7 special, interdisciplinary, or generic services,
8 individualized supports, or for other assistance of
9 lifelong or extended duration and are individually
10 planned and coordinated;

11 4. "Mental illness" has the same meaning as in paragraph 11 of
12 Section 5-502 of Title 43A of the Oklahoma Statutes;

13 5. "Proceeding" means any delinquency proceeding under the
14 Oklahoma Juvenile Code.

15 SECTION 2. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-2-401.2 of Title 10A, unless
17 there is created a duplication in numbering, reads as follows:

18 A. 1. At any time prior to or during any proceeding pursuant
19 to the Oklahoma Juvenile Code other than a proceeding alleging the
20 child to be a child in need of supervision, the child's attorney,
21 the district attorney, or the court may raise the issue of a child's
22 competency to participate in the proceeding. If at the time the
23 issue of competency is raised the child is not represented by
24 counsel, the court shall immediately appoint counsel and shall also

1 appoint a guardian ad litem to ensure the best interests of the
2 child are addressed. The court shall stay all proceedings except to
3 allow the filing of a delinquency petition.

4 2. In any proceeding pursuant to the Juvenile Code other than a
5 proceeding alleging the child to be a child in need of supervision,
6 if the child who is the subject of the proceeding is thirteen (13)
7 years or older and if the child is not otherwise found to be
8 mentally ill, intellectually disabled, or developmentally disabled,
9 there exists a rebuttable presumption that the child is not
10 incompetent. Such presumption applies only for making a
11 determination as to whether the child is incompetent and shall not
12 be used or applicable for any other purpose.

13 B. The court may find a child incompetent without ordering a
14 competency evaluation or hearing if either of the following applies:

15 1. The district attorney, the child's attorney, and at least
16 one of the child's parents, legal guardians, or guardian ad litem
17 agree to the determination; or

18 2. The court relies on a prior court determination that the
19 child was incompetent and could not attain competency even if the
20 child were to receive competency attainment services.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2-2-401.3 of Title 10A, unless
23 there is created a duplication in numbering, reads as follows:

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1 A. When the party specified in paragraph 1 of subsection A of
2 Section 2 of this act has reasonable basis to believe that a child
3 is incompetent to proceed in the delinquency action, the party shall
4 file a motion for determination of competency. The motion shall
5 state that the child is incompetent to proceed and shall state facts
6 sufficient to set forth the reasonable basis to conduct a competency
7 evaluation. If the court raises the issue sua sponte, the court
8 shall set forth the reasonable basis to believe the child is
9 incompetent to proceed by written order.

10 B. Within fifteen (15) judicial days after the motion is made
11 pursuant to subsection C of Section 2 of this act, the court shall
12 make one of the following determinations:

13 1. That the child is incompetent pursuant to subsection B of
14 Section 2 of this act; or

15 2. Without conducting a hearing, that there exists a reasonable
16 basis to conduct a competency evaluation; or

17 3. Conduct a hearing to determine whether there exists a
18 reasonable basis to conduct a competency evaluation. If the court
19 conducts a hearing, it shall make its determination within five (5)
20 judicial days after the conclusion of the hearing whether a
21 reasonable basis exists for the child to receive a competency
22 evaluation.

23 C. If the court determines there is a reasonable basis for a
24 competency evaluation or if the district attorney and the child's

1 attorney agree to the evaluation, the court shall order a competency
2 evaluation. If the court orders a competency evaluation, the court
3 shall order that the competency evaluation be conducted in the
4 least-restrictive environment, taking into account the public safety
5 and the best interests of the child.

6 1. The court shall provide in its order that the evaluator
7 shall have access to all relevant confidential and public records
8 related to the child, including competency evaluations and reports
9 conducted in prior delinquent proceedings. The court shall provide
10 to the evaluator a copy of the petition and the names and contact
11 information for the judge, district attorney, child's attorney, and
12 parents or legal guardians.

13 2. Within five (5) judicial days after the court appoints an
14 evaluator, the district attorney shall deliver to the evaluator
15 copies of relevant police reports and other background information
16 relevant to the child that are in the district attorney's
17 possession.

18 3. Within five (5) judicial days after the court appoints an
19 evaluator, the child's attorney shall deliver to the evaluator
20 copies of relevant police reports and other relevant records
21 including, but not limited to, educational, medical, psychological,
22 and neurological records that are relevant to the evaluation and
23 that are in the attorney's possession.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-2-401.4 of Title 10A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The evaluation of a child who does not appear to the court
5 to be a person who is intellectually disabled shall be made by an
6 evaluator who is one of the following:

7 1. A licensed psychiatrist or licensed clinical psychologist
8 who has been in the actual practice of medicine or clinical
9 psychology for not less than three (3) consecutive years immediately
10 preceding the appointment, and qualified by specialized education,
11 training, or experience in forensic evaluations of children or
12 adolescents; or

13 2. A licensed mental health professional as defined in
14 paragraph 8 of Section 5-502 of Title 43A of the Oklahoma Statutes
15 employed by a facility operated by the Department of Mental Health
16 and Substance Abuse Services and designated by the Commissioner of
17 the Department of Mental Health and Substance Abuse Services as
18 appropriate for the inpatient evaluation for treatment of minors who
19 is appointed by the director of the facility to conduct the
20 competency evaluation.

21 B. An evaluation of a child who appears to the court to be at
22 least moderately intellectually disabled shall be made by an
23 evaluator who is a licensed physician, licensed psychiatrist or
24 licensed clinical psychologist who has been in the actual practice

1 of medicine or clinical psychology for not less than three (3)
2 consecutive years immediately preceding the appointment, has
3 expertise in child development specific to severe chronic disability
4 of children attributable to intellectual disability, and is
5 qualified by specialized education, training, or experience in
6 forensic evaluations of children or adolescents who have
7 intellectual disability.

8 C. If an evaluation is conducted by an evaluator qualified
9 pursuant to subsection A of this section and the evaluator concludes
10 that the child is a person who is at least moderately intellectually
11 disabled, the evaluator shall discontinue the evaluation and notify
12 the court within one (1) judicial day after reaching such
13 conclusion. Within two (2) judicial days thereafter, the court
14 shall order the child to undergo an evaluation by an evaluator
15 qualified pursuant to subsection B of this section. Within two (2)
16 judicial days after the appointment of the newly appointed
17 evaluator, the originally appointed evaluator shall deliver to the
18 newly appointed evaluator all information relating to the child
19 obtained during the original evaluation.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-2-401.5 of Title 10A, unless
22 there is created a duplication in numbering, reads as follows:

23 A. The evaluator shall file with the court a written competency
24 evaluation report within thirty (30) days after the date of the

1 order of appointment. For good cause shown, the court may extend
2 the time for filing for a period not to exceed fifteen (15) days.
3 The report shall include the evaluator's opinion as to whether the
4 child, due to mental illness, intellectual disability, or
5 developmental disability, or otherwise due to a lack of mental
6 capacity, is currently incapable of understanding the nature and
7 objective of the proceedings against the child or of assisting in
8 the child's defense. The report shall not include the evaluator's
9 opinion as to the details of the alleged offense as reported by the
10 child, or an opinion as to whether the child actually committed the
11 offense or could be culpable for committing the offense. No
12 statement made by a child during an evaluation or hearing conducted
13 pursuant to this act shall be used against the child on the issue of
14 responsibility or guilt in subsequent court proceedings.

15 B. A competency evaluation report shall address the following
16 questions:

17 1. Whether the child is able to appreciate the nature of the
18 allegations;

19 2. Whether the child is able to consult with an attorney and
20 rationally and effectively assist in the preparation of a defense;

21 3. If the answer to question 1 or 2 is no, whether the child
22 can attain competency within a reasonable time if provided with a
23 course of treatment, therapy, or training;

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1 4. Whether the child is mentally ill or is a child requiring
2 treatment as defined by the Inpatient Mental Health and Substance
3 Abuse Treatment of Minors Act; and

4 5. If the child is released without treatment, therapy, or
5 training, whether the child poses a significant threat to the life
6 or safety of him or herself or others?.

7 C. The competency evaluation report shall include the
8 evaluator's opinion regarding the extent to which the child's
9 competency may be impaired by the child's failure to meet one or
10 more of the criteria listed in subsection B of this section. If the
11 evaluator concludes that the child's competency is impaired but that
12 the child may be able to understand the nature and objectives of the
13 proceeding against the child, to assist in the child's defense, and
14 to understand the consequences that may be imposed or result from
15 the proceedings with reasonable accommodations, the report shall
16 include recommendations for reasonable accommodations the court
17 might make to assist in compensating for mental competency
18 weaknesses. If the evaluator concludes the child's competency is so
19 impaired that the child would not be able to understand the nature
20 and objectives of the proceeding against the child, to assist in the
21 child's defense, or to understand the consequences that may be
22 imposed or result from the proceedings, the report shall also
23 include a prognosis as to whether there is a substantial probability
24 that the child could attain competency within the periods set forth

1 in subparagraph a of paragraph 3 of subsection C of Section 7 of
2 this act.

3 D. If the evaluator concludes there is a substantial
4 probability that the child could attain competency within the
5 periods set forth in subparagraph a of paragraph 3 of subsection C
6 of Section 7 of this act, the competency evaluation report shall
7 include:

8 1. A recommendation as to the least restrictive setting for
9 child competency attainment services consistent with the child's
10 ability to attain competency and the safety of both the child and
11 the public; and

12 2. A list of the providers of child competency attainment
13 services known to the evaluator located in reasonable proximity to
14 the child's current residence.

15 E. The competency evaluation reports shall also include:

16 1. The evaluation procedures used, including psychometric tests
17 administered, records reviewed, and identity of persons interviewed;

18 2. Pertinent background information, including history of
19 educational performance, psychiatric history, and family history;

20 3. Results of mental status examination; and

21 4. A description of any psychiatric symptoms or cognitive
22 deficiencies, including a diagnosis, if one has been made.

23 F. The court shall provide a copy of each competency evaluation
24 report it receives to the district attorney, the child's attorney,

1 the child's parents, legal guardian, and guardian ad litem, if one
2 was appointed. Counsel shall not disseminate the report.

3 G. The expense of obtaining an evaluation ordered by the court
4 may not be recovered from the child or the child's parents or legal
5 guardians. However, expenses associated with missed appointments
6 may be recovered from the child's parents or legal guardians.

7 H. 1. Before a hearing is held pursuant to Section 6 of this
8 act, any party may object to the contents of a competency evaluation
9 report and by motion request an additional evaluation. If the court
10 orders an additional evaluation, the evaluator shall complete such
11 evaluation as soon as possible but not more than forty-five (45)
12 calendar days after the order allowing the additional evaluation is
13 issued. An additional evaluation shall meet all the criteria that
14 apply to a court-ordered evaluation.

15 2. An additional evaluation allowed under paragraph 1 of this
16 subsection shall be made at the moving party's expense unless the
17 child's parents or legal guardian are indigent. If determined to be
18 indigent, the court fund shall pay the costs of the additional
19 evaluation. However, the court fund shall not be required to pay
20 costs exceeding that which the court would normally pay for a
21 competency evaluation conducted by a provider with which the court
22 has contracted to conduct competency evaluations.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-2-401.6 of Title 10A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Not less than fifteen (15) nor more than thirty (30)
5 judicial days after receiving the evaluator's report or an
6 additional evaluation, the court shall conduct a hearing to
7 determine the child's competency to participate in the proceeding.

8 B. The competency evaluation report shall be admissible in
9 evidence. The evaluator may be called as a witness and be subject
10 to cross examination. If the court contacts the evaluator to obtain
11 clarification of the report contents, the court shall promptly
12 inform all parties and allow each party to participate in each
13 contact.

14 C. In determining the competency of the child to participate in
15 the proceeding the court shall consider the content of all
16 competency evaluation reports admitted as evidence. The court may
17 consider additional evidence introduced at the hearing by the child
18 and by the district attorney.

19 D. 1. Except as otherwise provided, the court shall make a
20 written determination as to the child's competency or incompetency
21 based on a preponderance of the evidence within ten (10) judicial
22 days after completion of the hearing. The court may extend, by
23 journal entry, the period for making the determination for not more
24 than ten (10) additional calendar days.

1 2. The court shall not find a child incompetent to proceed
2 solely because the child is receiving or has received in-patient
3 treatment as a voluntary or involuntary mentally ill patient
4 pursuant to Section 8-210 et seq. of Title 43A of the Oklahoma
5 Statutes, or is receiving or has received psychotropic or other
6 medication, even if the child might become incompetent to proceed
7 without that medication.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2-2-401.7 of Title 10A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. After a hearing pursuant to Section 6 of this act, if the
12 court determines by a preponderance of the evidence that the child
13 is competent to proceed, the delinquency proceedings shall be
14 resumed as provided by law.

15 B. After a hearing held pursuant to Section 6 of this act, if
16 the court determines by the preponderance of the evidence that the
17 child is incompetent to proceed and cannot attain competency within
18 the period of time application under subparagraph a of paragraph 3
19 of subsection C of this section, the court shall dismiss the
20 petition or information without prejudice, except that the court may
21 delay dismissal for up to ninety (90) calendar days and take any of
22 the following actions:

23 1. Refer the matter to the Oklahoma Department of Human
24 Services and request a determination whether a deprived action

1 should be filed in accordance with the Oklahoma Children's Code
2 alleging that the child is a neglected, abused or dependent child;

3 2. Refer the matter to the district attorney for consideration
4 of initiating a Child in Need of Supervision or Minor in Need of
5 Mental Health and Substance Abuse Treatment proceeding in accordance
6 with the Oklahoma Juvenile Code or Inpatient Mental Health and
7 Substance Abuse Treatment of Minors Act; or

8 3. Place the child in the custody of a parent, legal guardian,
9 or other suitable person under such terms and conditions as deemed
10 in the best interests of the child and the public, which conditions
11 may include the provision of outpatient services by any suitable
12 public or private agency.

13 C. If the court determines by a preponderance of the evidence
14 that a child is incompetent to proceed but may likely attain
15 competency, the court shall stay the proceedings and order the child
16 to receive services designated to assist the child in attaining
17 competency, based upon the recommendations in the competency
18 evaluation report unless the court makes specific findings that the
19 recommended services are not justified. The court shall order the
20 child's parent or legal guardian to contact the designated provider
21 by a specified date to arrange for services.

22 1. The competency attainment services provided to a child shall
23 be based on a court-approved competency attainment plan described in
24 paragraph 2 of subsection D of this section, and are subject to the

1 conditions and time periods required pursuant to this section
2 measured from the date the court approves the plan.

3 2. The court shall order that the competency attainment
4 services ordered are provided in the least-restrictive environment,
5 taking into account the public safety and the best interests of the
6 child. If the child has been released on temporary orders and
7 refuses or fails to cooperate with the service provider, the court
8 may modify the orders to require a more appropriate setting.

9 3. No child shall be required to participate in competency
10 attainment services for longer than is required to attain
11 competency. The following maximum periods of participation shall
12 apply:

- 13 a. if services are being provided outside a residential
14 setting, the child shall not participate in those
15 services for a period exceeding six (6) months or upon
16 the child's 18th birthday, whichever occurs first, if
17 the child is charged with an act that would be a
18 misdemeanor if committed by an adult; or a period
19 exceeding twelve (12) months or upon the child's 18th
20 birthday, whichever occurs first, if the child is
21 charged as a delinquent for an act that would be a
22 felony if committed by an adult,
- 23 b. if services are being provided in a residential,
24 detention, or other secure setting for reasons other

1 than to participate in competency attainment services
2 and the child is also ordered to participate in
3 competency attainment services currently, the child
4 shall participate in the competency attainment
5 services for not longer than the relevant period set
6 forth in subparagraph a of this paragraph. In no
7 event shall a child who is found to be not competent
8 to proceed as a pre-adjudicated delinquent be held in
9 a secure detention facility other than the length of
10 time permitted in subparagraph a of paragraph 1 of
11 subsection A of Section 2-3-101 of Title 10A of the
12 Oklahoma Statutes.

13 D. 1. Within ten (10) judicial days after the court orders the
14 provider responsible for the child's competency attainment services,
15 the court shall deliver to that provider:

- 16 a. the name and address of the child's counsel,
- 17 b. a copy of the child's Petition,
- 18 c. a copy of the competency evaluation report,
- 19 d. the name, address, and phone number of the child's
20 parents or legal guardian,
- 21 e. OJA employee or Juvenile Bureau employee responsible
22 for the intake, supervision, or custody of the child,
23 if adjudicated, and
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1 f. any other relevant documents or reports concerning the
2 child's health that has come to the attention of the
3 court.

4 2. Not later than fifteen (15) calendar days after the child
5 contacts the competency attainment provider, a plan for the child to
6 attain competency shall be submitted to the court by the provider.
7 The court shall provide copies of the plan to the district attorney,
8 the child's attorney, the guardian ad litem, if any, and the child's
9 parents or legal guardian.

10 E. The provider shall submit reports to the court pursuant to
11 the following schedule:

12 1. Every ninety (90) calendar days and on the termination of
13 services. Each report shall include the following:

- 14 a. the services provided to the child, including
15 medication, education and counseling,
- 16 b. the likelihood that the competency of the child to
17 proceed will be restored within the applicable period
18 of time set forth in subparagraph a of paragraph 3 of
19 subsection C of this section,
- 20 c. whether the child can make simple decisions in
21 response to well-explained alternatives,
- 22 d. whether the child can distinguish an admission from a
23 denial and understand and appreciate the consequences
24 of each,

- e. whether the child can understand and appreciate his or her legal rights,
- f. whether the child can understand and appreciate what defenses are available and maintain a consistent defense,
- g. whether the child can understand and appreciate the adversarial nature of the legal process, including the roles of the judge, defense counsel, and the district attorney,
- h. whether the child can disclose to counsel facts pertinent to the proceedings at issue and aid counsel in locating and examining relevant witnesses,
- i. whether the child can display appropriate courtroom behavior,
- j. whether the child can testify without his or her mental state deteriorating under the stress of trial, and
- k. whether the child can listen to witness testimony and inform counsel of any distortions and misstatements;

2. Three (3) judicial days after the provider's determination that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency;

3. Three (3) judicial days after the provider's determination that the current setting is no longer the least restrictive setting

1 that is consistent with the child's ability to attain competency and
2 taking into account the public safety and the best interests of the
3 child. The provider shall include in the report an assessment of
4 the danger the child poses to himself or others and an assessment of
5 the appropriateness of the placement;

6 4. Three (3) judicial days after the provider's determination
7 that the child has achieved the goals of the plan and would be able
8 to understand the nature and objectives of the proceedings against
9 the child, to assist in the child's defense, and to understand and
10 appreciate the consequences that may be imposed or result from the
11 proceedings with or without reasonable accommodations. The report
12 shall include recommendations for the accommodations that would be
13 necessary or advantageous; and

14 5. Three (3) judicial days after the provider's determination
15 that the child will not achieve the goals of the plan within the
16 applicable period of time pursuant to subparagraph a of paragraph 3
17 of subsection C of this section. The report shall include
18 recommendations for services for the child and taking into account
19 the public safety and the best interests of the child.

20 F. The court shall provide copies of any report made by the
21 provider to the district attorney, the child's attorney, and the
22 child's guardian ad litem, if any. The Court shall provide copies
23 of any reports made by the provider to the child's parents or legal
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1 guardians, unless the court finds that doing so is not in the best
2 interest of the child.

3 G. Within fifteen (15) judicial days after receiving a
4 provider's report, the court may hold a hearing to determine if a
5 new order is necessary.

6 1. If the court determines that the child is not making
7 progress toward competency or is so uncooperative that attainment
8 services cannot be effective, the court may order a change in
9 setting or services that would help the child attain competency
10 within the relevant period of time as set forth in subparagraph a of
11 paragraph 3 of subsection C of this section.

12 2. If the court determines that the child has not or will not
13 attain competency within the relevant period of time as set forth in
14 subparagraph a of paragraph 3 of subsection C of this section, the
15 court shall dismiss the delinquency or youthful offender charge
16 without prejudice. The court may delay the dismissal for up to
17 ninety (90) calendar days and either:

18 a. refer the matter to the Oklahoma Department of Human
19 Services and request a determination whether a
20 deprived action should be filed in accordance with the
21 Oklahoma Children's Code alleging that the child is a
22 neglected, abused or dependent child, or

23 b. Place the child in the custody of his parent, legal
24 guardian, or other suitable person under such terms

1 and conditions as deemed in the best interests of the
2 child and the public, which conditions may include the
3 provision of outpatient services by any suitable
4 public or private agency.

5 3. A dismissal under paragraph 2 of this subsection shall not
6 preclude a future delinquent child proceeding as provided for under
7 Title 10A of the Oklahoma Statutes if the child eventually attains
8 competency.

9 H. After a hearing held pursuant to paragraph 1 of subsection G
10 of this section, the court determines that the child has attained
11 competency, the court shall proceed with the delinquent child's
12 proceeding in accordance with the provisions of the Juvenile Code.

13 I. A dismissal under this section does not bar a civil action
14 based on the acts or omissions that formed the basis of the petition
15 or information.

16 SECTION 8. This act shall become effective November 1, 2015.

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